

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Petitioner filed a "Petition for Writ of Habeas Corpus by a Person in State Custody," on September 15, 2008. The Petition challenges Petitioner's conviction and/or sentence in Petitioner's 1999-2000 Superior Court case number RIF085411 (Petition at 2). Petitioner previously challenged this same conviction and sentence in a habeas corpus petition filed in this Court in 2004. See Chavez v. Giurbino, No. CV 04-00761-GPS(E) ("the prior habeas action"). On August 3, 2004, the Magistrate Judge issued a report and recommendation in the prior habeas action, recommending denial and dismissal of the petition with prejudice as untimely. On September 2, 2004, the District Court filed an order adopting the report and

1 recommendation in the prior habeas action. On September 3, 2004, the
2 District Court entered judgment in the prior habeas action, denying
3 and dismissing the petition with prejudice.


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5 The Court must dismiss the present Petition in accordance with
6 28 U.S.C. section 2244(b) (as amended by the "Antiterrorism and
7 Effective Death Penalty Act of 1996"). Section 2244(b) requires that
8 a petitioner seeking to file a "second or successive" habeas petition
9 first obtain authorization from the court of appeals. See Burton v.
10 Stewart, 549 U.S. 147, 127 S. Ct. 793, 799 (2007) (where petitioner
11 did not receive authorization from Court of Appeals before filing
12 second or successive petition, "the District Court was without
13 jurisdiction to entertain [the petition]"); Barapind v. Reno, 225 F.3d
14 1100, 1111 (9th Cir. 2000) ("the prior-appellate-review mechanism set
15 forth in § 2244(b) requires the permission of the court of appeals
16 before 'a second or successive habeas application under § 2254' may be
17 commenced"); Harris v. Felker, 2007 WL 1599990 (E.D. Cal. June 4,
18 2007), report and recommendation adopted, 2007 WL 2326055 (E.D. Cal.
19 Aug. 14, 2007) (dismissing petition which challenged same conviction
20 challenged in previous petition, where petitioner had not obtained
21 authorization from Court of Appeal to file second or successive
22 petition). Petitioner evidently has not yet obtained authorization
23 from the Ninth Circuit Court of Appeals. Consequently, this Court
24 cannot entertain the present Petition. See Burton v. Stewart, 127
25 S. Ct. at 799; see also Murray v. Greiner, 394 F.3d 78, 81 (2d Cir.
26 2005) (dismissal of petition as barred by statute of limitations
27 "constitutes an adjudication on the merits that renders future
28 petitions under §2254 challenging the same conviction 'second or

1 successive' petitions under §2244(b)"); Bridgewawter v. Scriben, 2007
2 WL 2262760, at *1 (S.D. Cal. Aug. 3, 2007) (same); Reyes v. Vaughn,
3 276 F. Supp. 2d 1027, 1029 (C.D. Cal. 2003) (same).
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5 For all of the foregoing reasons, the Petition is denied and
6 dismissed without prejudice.
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8 LET JUDGMENT BE ENTERED ACCORDINGLY.
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10 DATED: Oct. 5, 2008.
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13 
14 GEORGE P. SCHIAVELLI
15 UNITED STATES DISTRICT JUDGE
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17 PRESENTED this 15th day of
18 September, 2008, by:
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21 CHARLES F. EICK
22 UNITED STATES MAGISTRATE JUDGE
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